IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10942 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOK BALLLVANTRAI BHATT

Versus

STATE OF GUJARAT

Appearance:

MS JAYSHREE C BHATT for Petitioner

MR KG SHETH AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/04/2001

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Article 226 of the Constitution of India challenging the order of his detention passed by the Commissioner of Police, Rajkot - respondent no. 2 herein

on 12.9.2000 on the ground that the petitioner was found to be bootlegger and therefore, he was required to be detained in exercise of the powers conferred by Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short "PASA").

2. The petitioner has challenged the aforesaid order of his detention dated 12/9/2000 on various grounds. One of the contentions is that though the order of detention has been recorded on the ground that some offences were registered against the petitioner, there was such time leg between the registration of the said offences and the order of detention to detain the petitioner. That therefore, considering the time leg between the two, it would not be treated to a proper application of mind and therefore, the order passed against the petitioner is illegal and therefore, it is required to be quashed and set aside.

3. On the aforesaid contention, the petitioner has claimed that the order of detention may be treated to be illegal and consequently, the order of detention passed against him be quashed and set aside and the petitioner may be set at liberty forthwith.

4. On receiving the petition, Rule was issued and Mr. K.G. Sheth, learned AGP appears on behalf of the respondents and waives service of Rule. I have heard Ms. Jayshree Bhatt learned advocate for the petitioner and Mr. K.G. Sheth, learned AGP for the State of Gujarat.

5. The learned advocate appearing for the petitioner has contended that the order of detention against the original detenu has been passed on the ground of false case registered against the said detenu. It is the case of the respondent that the case under Bombay Prohibition Act has been registered against the detenu being Crime Registration No. 239/2000 on 12/7/2000. Thereafter, the order in question has been passed against the detenu on 12.9.2000. Therefore, there was a time leg of more than about two months between the date of registration of offence and date of the order of detention of the detenu in question. It is therefore, contended that the order of detention is without application of mind and therefore, it may be considered to be illegal.

6. In support of the said contention, learned advocate for the petitioner has relied upon a decision of ANAND PRAKASH VS. STATE OF U.P., reported in AIR 1990 SC Page - 516. In para 12 of the said decision, it has been observes by the Hon'ble Supreme Court as follows :-

" The learned counsel also contended that there is an unexplained delay which makes the ground of detention not proximate vitiating the order of detention itself. The theft of the wire was on 14.2.1989 and the FIR was registered on 15.2.1989. On that day itself as seen from the record Jagdish, Santosh and Munshi Sharma were shown as accused on the basis of some information. The house of Jagdish was raided on 3.3.1989 and on the same day the factory of the detenu was raided and 20 Kg. of melted wire was recovered from Munshi Sharma but no action was taken till 2.5.1989 against the detenu. On being arrested on 2.5.1989 the detenu moved a bail application and the detention order itself was made on 3.5.1989. Though bail was granted, in view of the detention order he could not be released from jail. In spite of the fact that the recovery statement itself was made as early as on 3.5.1989 no action was taken till 3.5.1989. Nothing more is stated in the detention order. The delay has also not been satisfactorily explained in the counter statement of the respondents. The grounds instance, therefore, could not (be) a proximate cause for a sudden decision to take action under the National Security Act and this also vitiates the order."

7. Therefore, it has been observed that despite the fact that the offence was registered on 3.3.1989. Even the action was taken on 3.5.1989. In other words, the authority allowed a passage of time of two months without any further action in the matter. Almost similar fact appears in the present case also.

8. Complaint under Bombay Prohibition Act was registered against the detenu in question on 12/7/2000 and the order of detention has been passed on 12/9/2000. Again there was time leg of two months between the two. It seems that the principle enunciated in the case of Anand Prakash (Supra), squarely applies to the facts of the case before us. In that view of the matter, I respectfully follows the decision arrived at by the Hon'ble Supreme Court in the aforesaid matter and consequently, it is required to be said that the order of detention is illegal and required to be set aside.

9. In that view of the matter, the order passed by respondent no. 2, detaining the petitioner as aforesaid, cannot be sustained in the eye of law.

10. For the reasons stated above, the petition is required to be allowed and the order of detention against the petitioner is required to be set aside. In view of above, other points have not been presses into services.

11. For the fore going reasons, the petition is allowed. The impugned order dated 12/9/2000 passed by the Commissioner of Police, Rajkot city is quashed and set aside. The detenu shall be released forthwith if not required in any other cases. Rule is made absolute accordingly. Direct Service Permitted.

(D.P. Buch, J.)

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